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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTA ANA DIVISION

In re

THE ORIGINAL MOWBRAY'S TREE
SERVICE, INC., a Delaware corporation,
Debtor and Debtor in Possession.

Case No. 8:24-bk-12674-TA

Chapter 11

**PNC BANK'S REPLY IN SUPPORT OF
DEBTOR'S OPPOSITION TO MOTION TO
APPOINT TRUSTEE AND
SUBSTANTIVELY CONSOLIDATE
NON-DEBTOR ENTITIES**

Date: March 5, 2025
Time: 10:00 a.m.
Place: Courtroom 5B
411 West Fourth Street
Santa Ana, CA 92701

1 Secured Creditor PNC Bank, N.A. (“PNC”) hereby submits its Reply in Support of Debtor’s
2 Opposition [Dkt. No. 314] to the Motion to Appoint a Chapter 11 Trustee and Substantively
3 Consolidate Non-Debtor Entities [Dkt. No. 286] (the “Motion”) as follows:

4 **INTRODUCTION**

5 The Motion should be denied. The Motion appears to have been filed prematurely and
6 without adequate investigation. As this Court knows, it is highly unusual to file these kinds of
7 motions without a forensic investigation and expert testimony. The Motion describes transactions
8 with affiliates but does not provide any meaningful evidence that the transactions were inappropriate
9 or were not made in exchange for reasonably equivalent value. It asserts that it is possible that the
10 Debtor’s wholly-owned subsidiary, Pino Tree Service (“PTS”), could potentially make fraudulent
11 transfers for the benefit of insiders, but does not provide any meaningful evidence that any
12 inappropriate transfers have been made or that adequate controls are not in place to prevent such
13 transfers.

14 The mere possibility that something improper may have happened, or may in the future
15 happen, is not evidence and is not sufficient cause for the relief sought. The appointment of a chapter
16 11 trustee and substantive consolidation of non-debtor entities are drastic remedies. These remedies
17 would impair value and harm creditors. Further, as discussed below, these drastic remedies are not
18 needed to address Movant’s concerns because any concerns of the Movant or the Court can be
19 addressed by other means.

20 **A CHAPTER 11 TRUSTEE SHOULD NOT BE APPOINTED**

21 The appointment of a chapter 11 trustee would be harmful to the Debtor. Pursuant to the
22 Stipulation Authorizing Use of Cash Collateral [Dkt. No. 255] (the “Stipulation”) previously
23 approved by this Court [Dkt. No. 268], the appointment of a trustee is an Event of Default which
24 would terminate the estate’s authorization to use cash collateral. Stipulation, ¶10(a). Accordingly, in
25 the event that this Court is inclined to appoint a trustee, it should simply convert the case to one under
26 chapter 7.

NON-DEBTOR ENTITIES SHOULD NOT BE SUBSTANTIVELY CONSOLIDATED

A. PTS Should Not Be Consolidated

The Debtor has been doing quite well during the pendency of its bankruptcy case. Substantive consolidation would risk upsetting the apple cart. In particular, PNC is concerned that consolidation of PTS would jeopardize PTS's relationship with its primary customer, SCE, which would destroy substantial value. Indeed, if PNC was not seriously concerned about the potential of harming PTS's relationship with SCE, it would be supporting substantive consolidation because PNC's would benefit from the extension of its PTS's receivables from SCE.

B. MWP Should Not Be Consolidated

In order to induce PNC to make its loan to the Debtor, PNC required guaranties from both Robin Mowbray and MWP. PNC relied on the separateness of MWP and expected that it would be paid by MWP prior to any creditors of other affiliated entities. Further, PNC expected that any equity in MWP would inure to the benefit of MWP's owners, including Robin Mowbray. If MWP is consolidated into the Debtor, the value of its guaranties would be impaired.

THERE ARE LESS DRASTIC REMEDIES AVAILABLE

Any concerns of the Movant may be better addressed without the drastic remedies sought in the Motion. If there were no third-party CRO in place, an appropriate remedy might be the appointment of a limited purpose examiner to investigate transactions with affiliates. However, here there is a third-party CRO, Mr. Weiss of Force 10. Mr. Weiss has already examined various transactions and has provided substantial documentation and testimony with respect to the transactions.

Mr. Weiss could provide a report regarding anything of concern to the Movant or this Court. PNC suggests that Mr. Weiss file a report on the following:

1. Any compensation paid to insiders by PTS during the pendency of the Debtor's bankruptcy case;
2. A description of the controls in place at PTS that would prevent it from making transfers outside the ordinary course of business, including transfers to insiders for less than reasonably equivalent value;

3. Confirmation that charges by Phoenix Traffic Management to PTS are passed through to SCE in full and are not a way to siphon money out of PTS; and

4. A representation that, in the event that he discovers any material impropriety by the Debtor or PTS during the pendency of the Debtor's bankruptcy case, he will promptly inform the Court.

CONCLUSION

Based on the foregoing, the Motion should be denied or, in the alternative, the hearing on the Motion should be continued until the filing of the report described above.

Respectfully submitted,

Michael B. Lubic
Connor J. Meggs
Rachel Berman
K&L GATES LLP

Dated: February 26, 2025

By: /s/ Michael B. Lubic
Michael B. Lubic
Attorneys for PNC Bank, N.A.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is K&L Gates LLP, 10100 Santa Monica Boulevard, 8th Floor, Los Angeles, California 90067.

A true and correct copy of the foregoing document entitled **PNC BANK'S REPLY IN SUPPORT OF DEBTOR'S OPPOSITION TO MOTION TO APPOINT TRUSTEE AND SUBSTANTIVELY CONSOLIDATE NON-DEBTOR ENTITIES** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On February 26, 2025, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Kenneth J Catanzarite** kcatanzarite@catanzarite.com
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- **Raffi Khatchadourian** raffi@hemar-rousso.com

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On February 26, 2025, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Force Ten Partners LLC
5271 California Ste 270
Irvine, CA 92617

Raines Feldman Littrell LLP
3200 Park Center Dr Ste 250
Costa Mesa, CA 92626

Brian Weiss
5271 California Ste 270
Irvine, CA 92617

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on February 26, 2025, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA FEDERAL EXPRESS

Honorable Theodor C. Albert, Chief Judge
United States Bankruptcy Court
Central District of California
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5085 / Courtroom 5B
Santa Ana, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 26, 2025 Jonathan Randolph
Date Printed Name

/s/ Jonathan Randolph
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): continued

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